

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 28051 of 2007(M)

E.P.NO.747/2003 IN OS.62/2002 of PRL.M.C.,IRINJALAKUDA
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PETITIONER:

BABU, AGED 34, S/O. KUNJUKUTTIAMMA,
POTTANAT HOUSE, KALLUR VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT:

BHARATHI AMMA, W/O. GOPALAKRISHNA
PANICKER, PERUMPILLY HOUSE, KALLUR VILLAGE,
MUKUNDAPURAM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.28051 OF 2007

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Dated this the 20th day of September 2007

JUDGMENT

This writ petition is filed challenging the issuance of arrest warrant against the petitioner. The petitioner is the judgment debtor in O.S.No.62/2002. A perusal of the execution petition would reveal that the suit was decreed for an amount of Rs.80,500/- with 6% interest on the sum of Rs.70,000/- from 5.1.2002 till realisation plus cost. The E.P. is for Rs.92,340/-. Learned counsel for the revision petitioner submits that there was another proceeding under Section 138 of the Negotiable Instruments Act and in the appellate stage the court ordered to pay Rs.15,000/- as compensation and undergo imprisonment till the raising of the court. It was submitted before the appellate Judge in Criminal Appeal No.353/2005 that out of Rs.70,000/-, Rs.55,000/- had already been paid and that is why Rs.15,000/- had been ordered to be paid as compensation. Now the learned counsel would submit that the court has to consider whether the petitioner be directed to pay the same amount once before criminal court and the other before the civil court. He also wants the court to consider about the

impact of Section 357(5) of the Criminal Procedure Code. I feel this is a matter which has not been considered by the court below and it may not be proper on the part of this court to consider this question at this stage, without the other party before me. At any rate, there will be still amounts due and therefore the court has to consider all those matters and pass orders.

Therefore, I set aside the order of the Prl.Munsiff, Irinjalakkuda in E.P.No.747/2003 in O.S.No.62/2002 and direct the court to consider the matter afresh after hearing both sides. Since the matter is disposed of at the admission stage itself, the court shall give notice to the decree holder and hear her before the final disposal of the matter. Needless to say that till that time the petitioner shall not be arrested and detained in civil prison.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-